

the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRASSLEY (for himself and Mr. LEAHY):

S. 3045. A bill to amend title 18, United States Code, to reform certain forfeiture procedures, and for other purposes; to the Committee on the Judiciary.

Mr. GRASSLEY. Mr. President, today I am introducing the DUE PROCESS Act. I am very pleased that Senator LEAHY is a cosponsor of the bill. This legislation will make important reforms to the practice of civil asset forfeiture.

The Senate Judiciary Committee held hearings last year on the problems associated with civil asset forfeiture. This is a process by which a person who has been convicted of no crime, and in fact is often not even charged with a crime, can nonetheless lose his property if the property is suspected to be owned as a result of wrongdoing. Civil asset forfeiture has a place in our society, including gaining control over assets used to further terrorism and the drug trade. But there have been excesses, and this bill is designed to address many of them.

Working together in a bipartisan and bicameral way, we have had months long discussions about how to draft legislation to improve the fairness of civil asset forfeiture. The bill that I am introducing today has been introduced and passed through the House Judiciary Committee on a bipartisan voice vote. It is the result of these bipartisan and bicameral discussions. The Senate should consider the same bill.

The DUE PROCESS Act broadens the timelines for an owner to challenge forfeitures. It extends protections in existing law to judicial forfeitures, not only administrative forfeitures. The government must provide greater notice to owners whose property has been seized, including notice of the rights that they may invoke to regain their property and their right to be represented by counsel in contesting a forfeiture either judicially or administratively. The property owner is given more time to respond to the seizure. Very importantly, an owner who challenges the seizure receives an initial hearing, at which time she is further notified of her rights and will have her property released if the seizure was not made according to law. Under the bill, the government must prove that seizure is warranted by clear and convincing evidence, rather than the current preponderance of the evidence standard.

Some of these provisions are in the bill because of media reports, including in my home state of Iowa. For instance, the Des Moines Register has reported that in many instances, innocent motorists surrender the property

that law enforcement seizes without always having an understanding of how the seizure can be challenged. The bill will ensure that those whose assets are seized are given notice of the process by which the seizure can be contested and their right to have counsel represent them in the forfeiture proceeding.

In a change to criminal forfeiture, which can take place after a defendant is convicted of a crime, the bill overturns the Supreme Court's recent decision in *Kaley v. United States*. A defendant will have the right to ask for a hearing to modify the seizure so as to demonstrate that assets not associated with the charged criminal activity can be used to hire the attorney of the defendant's choice. The court is directed to consider various factors at the hearing.

Additionally, the bill makes it easier for those whose assets have been seized to recover their attorney's fees when they settle their cases. The bill requires the Justice Department's Inspector General to audit a sample of civil forfeitures to make sure they are consistent with the Constitution and the law. And it directs the Attorney General to establish databases on real-time status of forfeitures and on the types of forfeitures sought, the agencies seeking them, and the conduct that leads the property to be forfeited.

Further, the bill codifies DOJARS policy to allow civil forfeiture in structuring cases only when the property to be seized is derived from an underlying crime other than structuring, or where it is done to conceal illegal activity. Structuring is a crime by which cash deposits or withdrawals are made with the intent of avoiding government reporting requirements. In Iowa, for instance, prosecutors brought an action against a restaurateur, Carole Hinders, who had deposited cash from her operations without any intention to evade any reporting requirement or to conceal some other illegal activity. After IRS changed its policy, prosecutors dropped the case. The bill will prevent the government from pursuing civil asset forfeiture cases such as these in the future.

Finally, the bill expands existing protections for innocent owners of property that is sought to be forfeited. The government will have to prove that there is a substantial connection between the property and an offense and that the owner of the seized property intentionally used the property, knowingly consented to its criminal use, or reasonably should have known that the property might be used in connection with the offense.

Many of these provisions strengthen the Civil Asset Forfeiture Reform Act. That legislation improved the process and provided greater protection for innocent owners involved in civil asset forfeiture than had previously been the case. But, as we have seen, excesses and injustices still remain. The DUE PROCESS Act is designed to make fur-

ther progress in this area to protect the rights of people whose property has been seized without any judicial finding of criminal wrongdoing.

The problems associated with civil asset forfeiture need to be addressed. In various ways, it would have been preferable to make changes that go even beyond those in this bill. However, we do want to work with law enforcement and address their legitimate interests and concerns. I can assure them that we will continue to talk as this legislation works its way to Senate passage.

#### SUBMITTED RESOLUTIONS

SENATE RESOLUTION 485—TO ENCOURAGE THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF THE CONGO TO ABIDE BY CONSTITUTIONAL PROVISIONS REGARDING THE HOLDING OF PRESIDENTIAL ELECTIONS IN 2016, WITH THE AIM OF ENSURING A PEACEFUL AND ORDERLY DEMOCRATIC TRANSITION OF POWER

Mr. FLAKE (for himself, Mr. COONS, Mr. ISAKSON, and Mr. DURBIN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 485

Whereas the United States Government has supported and will continue to support the principle that the people of the Democratic Republic of the Congo (in this resolution referred to as "the DRC") should choose their own government in accordance with their constitution and all relevant laws and regulations;

Whereas the constitution of the DRC requires that elections be held in time for the inauguration of a new president on December 19, 2016, when the current presidential term expires;

Whereas, on March 30, 2016, the United Nations Security Council adopted resolution 2277, which called upon the Government of the DRC and its national partners, including the CENI (Independent National Electoral Commission), "to ensure a transparent and credible electoral process, in fulfillment of their primary responsibility to create propitious conditions for the forthcoming elections . . . scheduled for November 2016 in accordance with the Constitution" and urged the Government of the DRC and all relevant parties to ensure an electoral environment conducive to a "free, fair, credible, inclusive, transparent, peaceful, and timely electoral process, in accordance with the Congolese constitution";

Whereas events in the DRC over the last year and a half have called into serious question the commitment of the Government of the DRC to hold such elections on the required timeline, and President Joseph Kabila has not publicly committed to stepping down at the end of his term;

Whereas there are 12 presidential elections slated to take place on the continent of Africa by the end of 2017, and what transpires in the DRC will set an important example for the leaders of those countries; and

Whereas many observers have expressed concern that failure to move ahead with elections in the DRC could lead to violence and instability inside the DRC, which could reverberate throughout central Africa's Great Lakes region: Now, therefore, be it